

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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IN IN RE: OPENAI, INC. COPYRIGHT :
INFRINGEMENT LITIGATION :
: 25-md-03143 (SHS) (OTW)
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This document relates to: :
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ZIFF DAVIS INC. et. al v. OPENAI, INC. et. :
al, No. 1:25-cv-04315-SHS-OTW :
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**DECLARATION OF CAROLYN M. HOMER IN SUPPORT OF OPENAI'S REPLY
MEMORANDUM IN SUPPORT OF PARTIAL MOTION TO STAY**

I, Carolyn M. Homer, hereby declare as follows:

1. I am a counsel at Morrison & Foerster LLP representing OpenAI Inc. and its affiliates (together, “OpenAI”) in the above-captioned matter. I make these statements based on personal knowledge, and if called upon to testify as to the facts stated in this declaration, I would and could so testify.
2. Ziff Davis filed this action on April 24, 2025 asserting claims related to GPT, GPT-2, GPT-3, GPT-3.5 Turbo, GPT-4, GPT-4 Turbo, o1, o1 mini, o1-pro, GPT-4.1, GPT-4.5, o3, o3-mini, o4-mini, and GPT-5. *See Complaint, Ziff Davis, Inc. et al. v. OpenAI, Inc. et al.*, No 1:25-cv-00501 (D. Del.), ECF 1.
3. Excluding the Ziff Davis Complaint, the most recent model within the scope of discovery in the MDL pleadings is GPT-4o, which was released over a year ago on May 13, 2024.
4. OpenAI has collected documents and provided discovery related to the GPT-class of models currently within the scope of discovery: GPT-3, GPT 3.5, GPT-4, GPT-3.5 Turbo, GPT-4 Turbo, and GPT-4o. These models were released July 2020, March 2022, March 2023, also

March 2023, November 2023, and May 2024, respectively. See **Exhibit A** (OpenAI's supplemental and amended response to NYT's Interrogatory 7).

5. OpenAI has not collected documents and provided discovery related to more recent GPT-class models. GPT-4.5 and GPT-4.1 were released on February 27, 2025 and April 14, 2025, respectively. GPT-5 has not been released. Prior to the MDL transfer order, GPT-4.5, GPT-4.1, and GPT-5 were not included in any of the operative complaints in the consolidated actions.

6. OpenAI has also not collected documents and provided discovery related to the o-class of models. The o1-mini, o1, o3-mini, o1-pro, o3, and o4-mini models were released on September 12, 2024, December 5, 2024, January 31, 2025, March 19, 2024, April 16, 2025, and also April 16, 2025, respectively. Prior to the MDL transfer order, the o1-mini, o1, o1-pro, o3-mini, o3, and o4-mini models were not included in any of the operative complaints in the consolidated actions.

7. For OpenAI's GPT-class of models through GPT-4o, in addition to written discovery responses, OpenAI has provided three major categories of discovery: inspections of training data, inspections of source code, and production of documents.

8. OpenAI has not, to date, undertaken additional collections of technical textual training data, source code, or documents related to o1, o1 mini, o1-pro, GPT-4.1, GPT-4.5, o3, o3-mini, o4-mini, and GPT-5.

9. **Training Data.** OpenAI has made available for inspection (to the extent available) the textual training data underlying GPT-3, GPT 3.5, GPT-3.5 Turbo, GPT-4, GPT-4 Turbo, and GPT-4o. As of October 2024, OpenAI had already made available for inspection over 100 terabytes of textual training data to the News Plaintiffs.

10. Based on prior collections for in-scope models, requiring OpenAI to collect, review, and produce each post-training module applicable to each of Ziff Davis's nine new models would significantly burden OpenAI and delay discovery across all MDL cases—resulting in approximately an additional four to six months of discovery to collect and make available for inspection such data.

11. **Source Code.** OpenAI has made available for inspection (to the extent available) the source code underlying GPT-3, GPT 3.5, GPT-3.5 Turbo, GPT-4, GPT-4 Turbo, and GPT-4o. To date, OpenAI has made available for inspection [REDACTED] unique files and [REDACTED] total files of source code information.

12. Because many of these out-of-scope models were developed by separate teams with separate code bases and the volume of source code underlying OpenAI's models has grown, OpenAI's conservatively estimates that making available for inspection the additional source code files for the GPT-4.5, GPT-4.1, o1-mini, o1, o3-mini, o1-pro, o3, and o4-mini models would double that volume. This would delay discovery by four to six months.

13. **Document Review.** Across more than a year of document discovery in all now-consolidated MDL cases, OpenAI contract attorneys have spent more than 35,000 hours individually reviewing approximately 940,000 unique documents. Those documents have been collected and searched from 38 custodians, as well as additional collections from targeted custodial searches and non-custodial repositories.

14. Discovery into nine additional models (GPT-4.5, GPT-4.1, GPT-5, o1-mini, o1, o1-pro, o3-mini, o3, and o4-mini) would implicate additional custodians, collections, and search terms as many of them were developed by separate teams. OpenAI has preliminarily tested the expanded model terms—the nine new models—on data it already has collected. Although this is

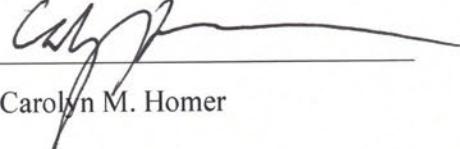
underinclusive, OpenAI's estimate is that it would take an additional four to six months to review the resulting hits.

15. These estimates do not account for any further review should additional tag-along actions be filed referencing new models.

16. The lead class and news cases in the MDL were filed against OpenAI in the fall of 2023. *See Author's Guild Action*, Complaint, No. 1:23-cv-10211, ECF 1 (Sept. 19, 2023); *New York Times Action*, Complaint, No. 1:23-cv-11195, ECF 1 (Dec. 27, 2023). Since December 31, 2023, OpenAI's employee headcount has grown exponentially and accordingly, use of OpenAI's principal corporate communications channels, including email, Slack, and Google Drive, has grown exponentially in tandem.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 30th day of June 2025, in Alexandria, VA.



Carolyn M. Homer